



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 00113-99

30 June 2000

CDR [REDACTED] CHC USN RET  
[REDACTED]  
[REDACTED]

Dear Commander [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 23 April and 1 June 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 1 June 1999. They found that the narrative of the contested fitness report does incorrectly suggest that you received nonjudicial punishment. However, they further found this was not a material matter warranting corrective action, now that you have retired. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

113-99  
IN REPLY REFER TO  
1611  
Ser 834C/607  
23 Apr 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters, NPC-00ZCB

Subj: CDR [REDACTED], CHC, USN(RET), [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB/NPC00ZCB of 29 Mar 99  
(b) Manual of the Judge Advocate General § 0114c  
(c) BUPERINST 1610.10

Encl: (1) BCNR file 08439-98 w/service record

1. Reference (a) requested an advisory opinion in response to [REDACTED]'s request to remove from his officer permanent personnel record all references to a nonjudicial punishment (NJP) proceeding held against him on 27 Apr 97.

2. Concur with CDR [REDACTED]'s request to remove the reference to the NJP in BLOCK 41, the "COMMENTS ON PERFORMANCE" portion of his fitness report for the period 97SEP01 to 98AUG08. [REDACTED] issuance of an oral reprimand does not constitute punishment per reference (b) and therefore would not be filed as such in [REDACTED]'s officer permanent personnel record. Accordingly, absent any other NJP proceedings that may have occurred during the reporting period, any mention of [REDACTED] receiving NJP during the reporting period would be inappropriate.

3. Do not concur with [REDACTED]'s request to adjust the adverse marks in BLOCK 34 "EQUAL OPPORTUNITY" and BLOCK 35, "MILITARY BEARING/CHARACTER" of the aforementioned fitness report. The fact punishment was not imposed in the case does not imply substandard performance or misconduct did not occur.

4. As no documents produced by the 27 Apr 97 proceedings were filed [REDACTED] officer permanent personnel record as he suggests, no action need be taken relative to his request to have the documents removed from his record.

[REDACTED]  
Director  
Personnel Performance & Security  
Division



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

113-99  
1610  
PERS-311  
1 June 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: CDR [REDACTED], CHC, USN(RET), [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 September 1997 to 8 August 1998 and all references to the imposition of Non-Judicial Punishment of 20 May 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated his desire to submit a statement, however, the member's statement is not on file and not included in the petition, but the first endorsement is included.

b. The member received a 1.0 in block-34 Equal Opportunity, 1.0 in block-35 Military Bearing/Character, and block-41 Comments on Performance stating the member received NJP during the reporting period.

c. The member received an oral reprimand, which the reporting senior considered to be non-punitive. Although the fitness report specifically mentions the award of NJP, no punishment was awarded.

d. To remove the statement in block-41 concerning NJP would invalidate the fitness report, as there would be no justification for the two marks of 1.0.

e. The reporting senior is charged with commenting on the performance or characteristics of an officer under his/her command and determines what material will be included in a fitness report. The report represents the judgment and appraisal authority of the reporting senior. The reporting senior clearly explains in the Comments on Performance portion of the fitness report, as well as his endorsement to the member's statement, his reason for writing the report as he did.

3. We recommend the member's record remain unchanged.



Head, Performance  
Evaluation Branch